

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, MAY 1, 2006
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:05 p.m. Council President Peters recessed the meeting at 3:16 p.m. into Closed Session. Council President Peters reconvened the meeting at 4:01 p.m. with Council Member Maienschein not present. Council President Peters recessed the meeting at 4:57 p.m. into Closed Session. Council President Peters reconvened the meeting at 5:25 p.m. with Council Member Maienschein not present. The meeting was adjourned by Council President Peters at 5:38 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Atkins-present
 - (4) Council Member Young-present
 - (5) Council Member Maienschein-present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-present
 - (8) Council Member Hueso-present
- Clerk-Maland (gs)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Lt. Colonel Doug O'Brien of The Salvation Army.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

Conference with Labor Negotiator, pursuant to Government Code section 54957.6:

CS-1 Agency negotiator: Scott Chadwick, J. Rod Betts, Julie Dubick, Lisa Briggs, Jay Goldstone, Rich Snapper, Val VanDeweghe, Jessica Falk Michelli, William Gersten, and Regina Silva

Employee organizations: Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Deputy City Attorney Association

REFERRED TO CLOSED SESSION OF TUESDAY, MAY 2, 2006

DCA assigned: J. Falk Michelli

Discuss with Council the labor contract negotiations with the Police Officers Association, International Association of Firefighters Local 145, and the Deputy City Attorney Association regarding new labor agreements and deliberations, if necessary, following impasse procedures.

CLOSED SESSION COMMENT 1:

Hud Collins commented on calling an immediate summit with the unions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. – 3:10 p.m.)

Council President Peters closed the hearing.

Conference with Legal Counsel -existing litigation, pursuant to California Government Code section 54956.9(a):

CS-2 *San Diego Unified Port District v. ExxonMobil Corporation, et al.*
United States District Court Case No. 03-cv-1053

REFERRED TO CLOSED SESSION OF TUESDAY, MAY 2, 2006

CDCA: Severson

This case concerns the clean up and redevelopment of the Campbell Shipyard and adjacent property. In closed session, the City Attorney will brief the City Council on the status of the litigation and settlement discussions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:15 p.m. – 3:15 p.m.)

Council President Peters closed the hearing.

CS-3 *SDCERS v. San Diego City Attorney Michael J. Aguirre, et al. more*
San Diego Superior Court Case No. GIC841845

REFERRED TO CLOSED SESSION OF TUESDAY, MAY 2, 2006

CA: M. Aguirre

This case was originally filed by SDCERS for declaratory relief regarding whether the City Attorney's office may serve as general counsel for SDCERS. The City Attorney cross-complained against SDCERS for declaratory relief regarding the legality of pension benefits granted under MP I and MP II. In closed session the City Attorney will update the Council on the status of the matter.

CLOSED SESSION COMMENT 1:

Hud Collins commented on the cross-complaint not being authorized by Council.

CLOSED SESSION COMMENT 2:

Dan Coffey commented on the unprofessional conduct by the City Attorney Michael Aguirre.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:11 p.m. – 3:14 p.m.)

Council President Peters closed the hearing.



ITEM-200: Ninth Supplement to the Agreement for the Partial Use and Occupancy of Qualcomm Stadium Between the City of San Diego and the San Diego Chargers.

(See Report to the City Council No. 06-044. Mission Valley Community Area. District All.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-301394

Authorizing the Mayor to execute the Ninth Supplement to the Agreement, which shall allow the Chargers to discuss relocation of the Franchise to any site within the boundaries of the County of San Diego, including, but not limited to, any site within any city located in the County of San Diego;

Authorizing and directing the Mayor to take any necessary or appropriate actions to implement the intent and purposes of this resolution.

STAFF SUPPORTING INFORMATION:

On May 30, 1995, the City of San Diego and the Chargers Football Company entered into the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium. The Agreement has been supplemented on eight previous occasions to address improvements to the stadium, and to allow for and to incorporate amendments resulting from renegotiation of Agreement provisions. The greater San Diego County community shares the City's interest in the Chargers remaining a locally based team. The proposed Ninth Supplement to the Agreement will allow the Chargers additional time and opportunity to explore other San Diego County areas or jurisdictions where the team might relocate. Specifically, Supplement Number Nine would introduce the term "Permitted Territory" into Agreement Sections 1 - Definitions, and Section 31 - Negotiations to Relocate Franchise. The term "Permitted Territory" shall mean "any site within the boundaries of the County of San Diego, including, but not limited to, any site within any city located in the County of San Diego." (see Ninth Supplement)

FISCAL CONSIDERATIONS:

There are no known financial consequences associated with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City Council has considered and approved eight prior supplements to the overall Lease Agreement since 1995.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Chargers Football Company, LLC

Waring/Froman

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:21 p.m. – 3:07 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-250: SUBMISSION OF BALLOT PROPOSALS

City Council Policy 000-21 establishes the procedure for submittal of ballot proposals. The Council Policy states that members of the public shall submit proposals to the City Clerk, who shall then transmit them promptly to the Rules Committee for review and comment. The proposals must be submitted in time to allow the City Clerk to list on the Council Docket 127 days prior to the election the ballot proposals which have been referred back to Council following Rules Committee review.

Therefore, the City Clerk's Office has established the following administrative guidelines for the November 7, 2006 election:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	6/16/2006	144	LAST DATE (10:00 a.m.) for public, departments, and agencies to submit ballot proposals to City Clerk for review by Rules Committee
Wednesday	6/21/2006	139	Rules Committee review of ballot proposals
Monday	6/26/2006	134	Council Docket (PUBLIC NOTICE) lists proposals referred by Rules Committee
Monday	7/10/2006	120	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	7/31/2006	99	Council adopts ordinances prepared by City Attorney
Friday	8/11/2006	88	Last day for City Clerk to file with Registrar of Voters all elections material
Thursday	8/24/2006	75	Last day to file ballot arguments with City Clerk

If you have questions, please contact the Office of the City Clerk at (619) 533-4050.

ITEM-251: Notice of Pending Final Map Approval – 3376 Grim Avenue.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “3376 Grim Avenue” (T.M. No. 81839/PTS No. 73512) located on the westerly side of Grim Avenue between Thorn Street and Upas Street in the Greater North Park Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

(1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.

(2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.

(3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.



ITEM-S400: Reconsideration of the Heller Ehrman Matter from the April 18, 2006 City Council Meeting.

(See memorandum M-06-04-19 from Councilmember Madaffer dated April 25, 2006.)

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Subitem-A: Waiving the Permanent Rules of the City Council, Section 22.0101 of the San Diego Municipal Code.

NOTE: 6 votes required.

Subitem-B: Reconsidering final payment to Heller Ehrman LLP, for services rendered in connection with the lawsuit San Diego City Employees' Retirement System v. Michael Aguirre and the lawsuit City of San Diego v. Callan Associates, Inc.

- 1) Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the lawsuit San Diego City Employees' Retirement System v. City Attorney Michael Aguirre, et al. (City Council originally considered this item at its meeting of Tuesday, April 18, 2006, Item 331.)
- 2) Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the lawsuit City of San Diego v. Callan Associates, Inc. et al. (City Council originally considered this item at its meeting of Tuesday, April 18, 2006, Item 332.)

NOTE: If the matter is to be reconsidered, time has been reserved for the item to be heard on Tuesday, May 16, 2006.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:10 p.m. – 2:20 p.m.)

MOTION BY MADAFFER TO WAIVE THE PERMANENT RULES OF THE CITY COUNCIL IN SUBITEM A. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-nay, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.

MOTION BY MADAFFER TO RECONSIDER FINAL PAYMENT TO HELLER EHRMAN IN SUBITEM B AND TO BE HEARD ON MONDAY, MAY 22, 2006. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-nay, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-S401: Authorizing Expenditure of Funds Needed to Comply with Court Order in SR-56 Lawsuit.

(State Route 56 Corridor, Torrey Highlands Community Area. District 1.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-918) CONTINUED TO MONDAY, MAY 8, 2006

Amending the Fiscal Year 2006 Capital Improvement Program Budget for CIP-52-463.0 by increasing the budget amount by \$10,410,800;

Authorizing the appropriation of an amount not to exceed \$10,410,800 from General Fund Unappropriated Reserves, Fund 100, solely and exclusively, for the purpose of providing funds for the right-of-way acquisitions costs for CIP-52-463.0;

Authorizing the issuance of a check in the amount of \$10,410,800, from CIP-52-463.0, Fund 100, made payable to the State Treasury Condemnation Fund, to satisfy a court ordered payment in the State Route 56 eminent domain case, City of San Diego v. D.R. Horton, et al., San Diego Superior Court Case No. GIC777603-1, contingent upon the City Auditor and Comptroller certifying that the funds are available;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

STAFF SUPPORTING INFORMATION:

In November 2001, the City filed a Complaint in Eminent Domain against D.R. Horton to acquire 12.31 acres of a 39.38 acre parcel for the construction of State Route 56. The only issue relates to the "just compensation" to which D.R. Horton is entitled (the property owner's appraiser has valued the property at \$16,000,000 and the City's appraiser has valued the property at \$4,925,000). D.R. Horton does not challenge the City's authority to acquire the property by eminent domain.

The case came for trial in August 2003, and the jury verdict was \$5,589,200, which was paid. The trial judge granted the property owner's motion for a new trial, which was upheld on appeal. The matter has been set for a retrial on November 17, 2006. In preparation for the retrial, the property owner made a motion in court to increase the deposit of probable compensation to \$16,000,000, which was granted. Therefore, the City must deposit an additional \$10,410,800 (\$16,000,000 minus the \$5,589,200 that was already paid) with the State Treasury Condemnation Fund by May 5, 2006.

FISCAL CONSIDERATIONS:

There is not enough money remaining in the State Route 56 Project funds (CIP-52-463.0) to make the additional \$10,410,800 deposit. The General Fund Unappropriated Reserves has been identified to make the court-ordered deposit. Staff is exploring alternate funding sources to repay this amount to the General Fund Unappropriated Reserves.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council was briefed on the status of the litigation in Closed Session on April 4, 2006.

Goldstone/Haas

Aud. Cert. 2600767.

Staff: Leslie A. FitzGerald – (619) 533-5804

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:08 p.m. – 2:10 p.m.)

MOTION BY MADAFFER TO CONTINUE TO MONDAY, MAY 8, 2006, FOR FURTHER REVIEW. Second by Maienschein. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



[ITEM-S402:](#) Impasse Procedure.

MAYOR SANDERS' RECOMMENDATION:

(R-2006-) ADOPTED AS RESOLUTION R-301420

Providing an impasse procedure, if necessary, for Management and Police Officers Association currently involved in contract negotiations.

SUPPORTING INFORMATION:

The current MOU and Council Policy 300-6 provide that Labor Organizations have a right to Council hearing on any issues at impasse at the conclusion of negotiations.

The purpose of the impasse meeting shall be to identify and specify in writing the issue or issues that remain in dispute according to Council Policy 300-6.

Michell/Froman

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:02 p.m. – 4:56 p.m.;
5:25 p.m. – 5:38 p.m.)

A RESOLUTION WAS ADOPTED TO REFLECT THE FOLLOWING MOTION:

MOTION BY FAULCONER TO IMPOSE THE TERMS OF THE MAYOR'S LAST, BEST, AND FINAL OFFER ON THE POLICE OFFICERS ASSOCIATION. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-S403: Thorn Street Public Right-of-Way Vacation.

The project proposes the vacation of an unimproved portion of the Thorn Street right-of-way, within the Uptown Community Plan Area. The section of right-of-way proposed for vacation is 20 feet wide and 130 feet in length and is located just east of the intersection of Thorn Street and Falcon Street, west of Reynard Way, between the existing single-family structures at 3305 and 3275 Falcon Street. The area to be vacated has never been utilized as a street and would not provide a logical connection to any other street. Additionally, the section of the Thorn Street right-of-way located immediately east of the site has already been vacated due to the presence of steep slopes which prohibits street development. The portion of Thorn Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties or rights-of-way.

(Uptown Community Plan Area. District 2.)

(Continued from the meeting of April 24, 2006, Item 203, at the request of Councilmember Faulconer, for further review.)

NOTE: Hearing open. No public testimony taken on April 24, 2006.

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-869) ADOPTED AS RESOLUTION R-301395

Adoption of a Resolution adopting the findings with respect to Public Right-of-Way Vacation Permit No. 45365;

That this activity is exempt from CEQA pursuant to Section 153059(c)(3) of the State CEQA Guidelines (Minor Alterations in Land Use Alterations).

STAFF SUPPORTING INFORMATION:

The project proposes the vacation of an unimproved portion of the Thorn Street right-of way, within the Uptown Community Plan Area. This Public right-of-way Vacation is being requested by the adjacent property owner at 3305 Falcon Street.

The right-of-way proposed for vacation is 20 feet wide and 130 feet in length and is located just east of the intersection of Thorn Street and Falcon Street, west of Reynard Way. This section of right-of-way is currently unimproved and is utilized as yard area for the two single-family residences that border this right-of-way. The remaining portion of the Thorn Street right-of-way located between the subject portion and Reynard Way was previously vacated in 1980, as the sloping topography of the area made development of this portion impractical.

Staff has concluded that the purpose and intent for which the public right-of-way was originally dedicated is no longer met. The area to be vacated has never been utilized as a street and would not provide a logical connection to any other street. Additionally, the section of the Thorn Street right-of-way located immediately east of the site has already been vacated due to the presence of steep slopes which prohibits street development. The portion of Thorn Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties of rights-of-way.

The proposed vacation meets all of the criteria that would allow a decision maker to affirm the required findings. The portion of the street proposed to be vacated does not provide access to any of the abutting properties and the adjacent hillside makes it unlikely that the Street would be improved in the future to a degree that would facilitate vehicular access. The abutting property owners would benefit from the closure by regaining the vacated portion of the right-of-way and the ability to effect repairs to their property. The proposed vacation would not adversely affect the Uptown Plan and the proposed vacation would not affect existing access to properties.

Regulatory Framework

The Land Development Code establishes a process for approving applications to vacate public rights-of-way and includes the applicable findings that a decision maker must make to approve the requested vacation (Attachment 6). The findings generally establish that there is no present or prospective use for the right-of-way, either for the use for which it was intended, or a public use of a similar nature; that the public will benefit from the vacation by the improved use of the land; that the vacation will not adversely affect the applicable land use plan; and that the public facility for which the right-of-way was originally acquired will not be detrimentally affected by the vacation. As described in Section 125.0910(b) and 125.0940(c) of the Municipal Code, this section of right-of-way is eligible to be summarily vacated, therefore, a recommendation by the Planning Commission is not required.

Community Plan

The subject site is designated for Low Density Residential and Open Space by the Uptown Community Plan. The Community Plan states that unimproved street right-of-ways should be vacated only when determined that the right-of-way will not be needed in the future for public access to individual parcels or to public open space, to provide public parking, to provide open space for public use, or to maintain views of open space from the public right-of-way (pg. 170). The area where the street vacation is proposed is unimproved (Appendix C, pg. 216). Staff has determined that the unimproved right-of-way cannot be used for the purposes listed above and has limited views into the area designated as Open Space. Therefore, the request for the street vacation at this site would not adversely affect the community plan.

PREVIOUS COMMITTEE ACTION:

None.

FISCAL CONSIDERATIONS:

There is no fiscal impact. The project is processed through a deposit account paid for by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On March 1, 2005, the Uptown Community Planning Group voted 13-0-1 to recommend approval of the proposed right-of-way vacation.

KEY STAKEHOLDERS AND PROJECTED IMPACTS

Michael and Tina Valenti, Applicant (Attachment 4) and the Nathan Family Trust, adjacent property owner.

Halbert/Waring/PG

Staff: Paul Godwin – (619) 446-5103
David Miller - Deputy City Attorney

NOTE: This item is not subject to Mayor's veto.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:08 p.m. – 2:08 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 5:38 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 5:38 p.m.)